

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARK ROSS,

Plaintiff,

-against-

NICOLE ROBINSON, LAWYER; HILLARY CLINTON, GOVERNMENT OFFICIAL; DONALD TRUMP, PRESIDENT; SALLINO BARNS, LAWYER,

Defendants.

19-CV-6204 (CM)

ORDER OF DISMISSAL

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff, currently incarcerated in Marcy Correctional Facility, brings this *pro se* action, alleging that Defendants violated his constitutional rights. By order dated August 5, 2019, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis*.¹ For the reasons set forth below, the Court dismisses the complaint.

STANDARD OF REVIEW

The Court must dismiss a complaint, or portion thereof, that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b); *see Abbas v. Dixon*, 480 F.3d 636, 639 (2d Cir. 2007). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. *See Fed. R. Civ. P. 12(h)(3)*. While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they suggest,”

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed *in forma pauperis*. *See 28 U.S.C. § 1915(b)(1)*.

Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 474-75 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

A claim is frivolous when it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989), *abrogated on other grounds by Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007); *see also Denton v. Hernandez*, 504 U.S. 25, 33 (1992) (holding that “a finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible”); *Livingston*, 141 F.3d at 437 (“[A]n action is ‘frivolous’ when either: (1) the factual contentions are clearly baseless . . . ; or (2) the claim is based on an indisputably meritless legal theory.”) (internal quotation marks and citation omitted).

BACKGROUND

Plaintiff Mark Ross drafted this complaint using the prisoner complaint form provided by this Court. In addition to checking the box on the form to indicate “[v]iolation of [his] federal constitutional rights” as the legal basis for his claim, he also checks the box on the form to indicate “[o]ther,” and he writes “OMH Confadentalaliy [sic] breach constatution [sic] right breach goverment [sic] identification breach.” (Compl. at 2.)

Plaintiff lists the place of occurrence as “gang asalt [sic] gang rape vilation [sic] of constitution rights,” and the date of occurrence as “1/20/2012 4/4/2016 6/5/2014 prison city state.” (*Id.* at 4.)

Plaintiff alleges the following:

I was slash on lef side of face 25 stiches 4/4/16 I was a victim of a crime in 2012 cut from behind hundred fifty stiches & six stapels two the back of the head I suffered. I was gang rape on March 6th 2018 by Drake Clinton Tyshon Brown Shay Bell Sallino Barns Time St Crown Kevin Ross Brandan Ross Donnald Trump & Quomo. I had a law suit in for city state & fediral sence 2016 on gang asalt & Nicole Robinson who was my lawyer gave away my settalment check to Mack Baller gang wich is a Breach of the contract that was siend by Mark Ross in front of Nicole Robinson who descize her self as Amy Robinson two Mark Ross & had sexual intacorse with Mark Ross lital brother Brandon & had a son by

Brandn Ross & name him Mark Quarder Ross & Nicole Robinson gave away some of my money two Brandon & I never received my compunction. I am trimatize eamotional deastrest hurt is broken & heart fisacly eamotionaly & spirataly. I seek money compunction lasic sergery reconstroction & all of the correctional staff are geting down with the Mack baller's & are takeing money out of people account for the self & for larry contanetal & that is how the linton exscape hapen with the inmates getting out of jail & angalina lopez who drest up as a parole officer got Me Mark Ross to vilate my parole to try & kill Mark Ross in prison wich angalina lopez is known as Cardie B wich she is a Mucines that is causeing me pain & suffering. Also have a maxium expiration date of my parole finshis on January 21st 2021 and I am fairing that I will not be realest by the state because this Cardie Bee bitch that is descize as a mental health nurst.

(*Id.* at 4.)

In the section in which Plaintiff is asked to state the relief he seeks, he states “Quonity of weed sent two Mark Geoviny Royalty Ross in prison packege[,] 300.000 dollar loan sent to Mark Geoviny Royalty Ross inmate account with free t.v. & lasic sergery with reconstruction & a girl friend two come & see Mark Ross. Please & thank you.” (*Id.* at 5.)

DISCUSSION

Even when read with the “special solicitude” due *pro se* pleadings, *Triestman*, 470 F.3d at 474-75, Plaintiff’s claims rise to the level of the irrational, and there is no legal theory on which he can rely. *See Denton*, 504 U.S. at 33; *Livingston*, 141 F.3d at 437. The Court therefore dismisses this action as frivolous. 28 U.S.C. § 1915(e)(2)(B)(i).

District courts generally grant a *pro se* plaintiff an opportunity to amend a complaint to cure its defects, but leave to amend is not required where it would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123-24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Because the defects in Plaintiff’s complaint cannot be cured with an amendment, the Court declines to grant Plaintiff leave to amend.

CONCLUSION

The Clerk of Court is directed to assign this matter to my docket, mail a copy of this order to Plaintiff, and note service on the docket.

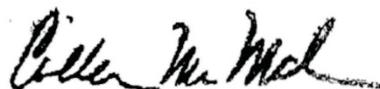
Plaintiff's complaint is dismissed as frivolous under 28 U.S.C. § 1915(e)(2)(B)(i).

The Clerk of Court is directed to docket this as a "written opinion" within the meaning of Section 205(a)(5) of the E-Government Act of 2002.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: August 19, 2019
New York, New York



COLLEEN McMAHON
Chief United States District Judge